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No. 75-651 and 75-715

IN THE

Supreme Court of The United States

OCTOBER TERM, 1975

TEAMSTERS LOCAL UNION 657,
vs
Petitioner
ERNEST HERRERA, TRINI URIBI, and MARIO MELCHOR,
Respondents
and
TEAMSTERS LOCAL UNION 657,
Petitioner
vs
PATRICK RESENDIS, TONY ESCOBEDO, and
ELIAS GONZALEZ,
Respondents
and
SOUTHERN CONFERENCE OF TEAMSTERS,
Petitioner
vs
ERNEST HERRERA, TRINI URIBI, and MARIO MELCHOR
Respondents
and
SOUTHERN CONFERENCE OF TEAMSTERS,
Petitioner
vs
PATRICK RESENDIS, TONY ESCOBEDO and
ELIAS GONZALEZ,
Respondents

On Writs Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

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Brief For Respondents

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INDEX

Page

Statement of the Case 1

Nature of the Case 1

Statement of Facts 3

Question Presented 3
That the maintenance of separate senority rosters by The Southern Conference of Teamsters and administered by Local Union 657 resulted in a discriminatory lock in to lower paying jobs and prevented these Respondents from obtaining higher paying line driving jobs.

A. The Southern Conference of Teamsters 3

Argument and Authorities 3

B. Local 657 11

Argument and Authorities 11

Conclusion 14

Certificate of Service 15

CASES CITED

Pages

Alabama vs. United States,
5 Cir. 1962, 304 F. 2d 583, 586, affirmed 371
U.S. 37, 83 S. Ct. 145, 9 L Ed 2d 112 5

Albermarle Paper Co. vs. Moody,
422 U.S. 405, 95 S. Ct. 2362; 45 L. Ed 289 (1975) 7

Bing vs. Roadway Express Inc.,
5 Cir. 1971, 444 F. 2d 686 6

Cypress vs. Newport News General and
Nonsectarian Hosp. Assn.,
4 Cir. 375 F. 2d 648, 654 6

Griggs vs. Duke Power Co.,
1971 401 U.S. 424, 430, 91 S. Ct. 849, 28 L. Ed 2d 158 5

Franks vs. Bowman Transportation Co.,
..... U S. ..... 47 L. Ed 2d 444 ..... 7, 8, 13

Jones vs. Lee Way Motor Freight,
10 Cir. 1970, 431 F. 2d 245 cert. denied 401 U.S. 954 6

Local 189 United Paper Makers and
Paper Workers vs. United States,
5 Cir. 1969, 416 F. 2d 980, 990-991, cert. denied,
397 U.S. 919, 90 S. Ct. 926, 25 L. Ed 2d 100 ..... 5, 10

Pettway vs. American Cast Iron Pipe Co.
5 Cir. 1974, 494 F. 2d 211 236 5

Quarles vs. Philip Morris, Inc., E.D.Va.,
1968, 279 F. Supp. 505 10

Resendis vs. Lee Way Motor Freight Inc.
5 Cir. 1974, 505 F. 2d 69 13

Sager vs. Yellow Freight System Inc.,
5 Cir. 1976, 52 F. 2d 72 ..... 9, 10, 11

United States vs. Hayes International Corp.
5 Cir. 415 F. 2d 1038, 1043 6

United States vs. Jacksonville Terminal Co.,
5 Cir. 1971, 451 F. 2d 418 cert. denied,
406 U.S. 906 Local 189 10

CASES CITED (cont'd)

Pages

United States vs. N.L. Industries, Inc.,
8 Cir. 1973, 479 F. 2d 354, 360 5

United States vs. Pilot Freight Carriers, Inc., M.D.N.C.
1972, 4 FED cases 472 10

United States vs Sheet Metal Workers,
8 Cir. 416 F. 2d 123 6

United States vs. T.I.M.E.D.C.,
5 Cir. 1975, 517 F. 2d 299 10

STATUTES CITED

42 U.S.C. Section 2000 e 2

42 U.S.C. 706 (g) 7

29 U.S.C. Section 160 13

42 U.S.C. Section 1981 10

42 U.S.C. Section 703 (h) 14

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Respondents

STATEMENT OF THE CASE

A. Nature of the Case

All of these Respondents at the time of trial were employed as city drivers in San Antonio, Texas at the time of the filing of their original petitions in the United States District Court for the Western District of Texas. Respondents, HERRERA, URIBI and MELCHOR were employed by Yellow Freight Sys-

tem Inc. In cause No. 75-720, management's Petition for Writ of Certiorari was denied however, the Petition for Rehearing is still pending.

Respondents, Resendis, Escobedo, and Melchor were employed by Lee Way Motor Freight, Inc. In cause No. 75-720, this Court denied management's Petition for Writ of Certiorari, however, the Petition for Rehearing is likewise still pending.

All of the above named six Respondents stand before the Court individually as members of Teamsters Local Union No. 657, under the jurisdiction of the Southern Conference of Teamsters.

The complaint of these Respondents simply put, is that because of the maintenance of separate senority rosters for city and road drivers by the Southern Conference of Teamsters and Teamsters Local 657, they have been discriminatorily "locked in" to lower paying city driving jobs, while being denied higher paying line driving jobs. The "lock in" complained of requires the same surrender of senority as does the "no transfer" rule of management which has been held to be discriminatory within the meaning of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000 e. et seq.

B. Statement of Facts

Respondents were all hired at their respective terminals to operate a pickup and delivery service of various freight parcels on a local basis.

Line drivers are long haul drivers and covered under a different contract.

Yellow Freight System did not domicile any line drivers at San Antonio, Texas. They did domicile line drivers at their Dallas and Amarillo terminals. Lee Way did, and still does domicile line drivers at its San Antonio, Texas Terminal.

Question Presented

I.

That the maintenance of separate senority rosters by The Southern Conference of Teamsters and administered by Local Union 657 resulted in a discriminatory "lock in" to lower paying jobs and prevented these Respondents from obtaining higher paying line driving jobs.

A. SOUTHERN CONFERENCE OF TEAMSTERS
Argument and Authorities

In their brief filed in this cause, Petitioner, Southern Conference of Teamsters presents two issues to the Court. The Southern Conference contend:

1. The senority system complained about did not prevent Respondents from transferring to line driving jobs.
2. That the date of entry into the line driving bargaining unit as a senority date does not, in effect lock these Respondents into lower paying city driving jobs.

Respondents take the position as to both Petitioners that the real question to be faced by the Court

is whether there is liability on the part of the Petitioner Unions and if so what guidelines should be set out to govern that liability.

In a broad sense this case presents this Court with the problems of an individual who seeks to better himself in the trucking industry. Obviously, the problems confronting the truck driver are many, especially, if he is a member of a minority group such as these Respondents.

The first barrier city drivers encountered in the trucking industry was the "no transfer" policy of their employers.

This "no transfer" policy disallows a city driver from transferring to a road driving job or seeking employment at another terminal. In order to comply with this regulation a city driver would have to resign his position as a city driver and apply for a road driving job. If this application were unsuccessful the city driver would have no assurance that he would be rehired in his position as a city driver. More than likely his vacancy would be filled and he would find himself unemployed.

Understanding this policy, the city driver then seeks the counsel and advise of his protector and benefactor, his Teamsters Local. Here he hits the second barrier. The Union explains patiently and politely that the Southern Conference of Teamsters, through the collective bargaining process, maintains two separate senority rosters for city drivers and road drivers. This means that if the city driver transfers to the road he has to start at the bottom of the road drivers senority list. This is referred to as the

"no senority carryover" rule. These separate contracts are not contained in the National Master Freight agreement which is negotiated on a nation wide basis but the problem exists because of two supplements to the National Master Freight Agreement negotiated on an area basis by Petitioner, Southern Conference of Teamsters.

Faced with no encouragement from the employer or his union it becomes easy to see that litigation has been the only alternative for obtaining relief for those situated as your Respondents. It goes without saying that the "no transfer" and "no senority carryover" policies are prevalent in the trucking industry. It is also quite obvious, that these policies result in a minority driver being unable to obtain the higher paying jobs because of the dual barriers encountered. The Courts have ruled that these facially neutral policies are violations of Title VII of the Civil Rights of 1964 because they tend to preserve and contnue the effects of past discriminatory practices. See **United States vs. N. L. Industries, Inc.** 8 Cir. 1973, 479 F 2d 354, 360; **Griggs vs. Duke Power Co.,** 1971, 401 U.S. 424, 430, 91 S. Ct. 849, 28 L. Ed 2d 158; **Pettway vs. American Cast Iron Pipe Company,** 5 Cir. 1974, 494 F. 2d 211 236; **Local 189 United Paper Makers and Paper Workers vs. United States,** 5 Cir. 1969, 416 F. 2d 980, 990-991, cert denied, 397 U.S. 919, 90 S. Ct. 826, 25 L. Ed 2d 100.

In approaching the problem of past discrimination, Respondents used the statistical approach approved by this Court in the cases of **Alabama vs. United States,** 5 Cir. 1962, 304 F. 2d. 583, 586, af-

firmed 371 U.S. 37, 83 S. Ct. 145, 9 L. Ed 2d 112; **United States vs. Hayes International Corp.**, 5 Cir. 415 F. 2d 1038, 1043; **United States vs. Sheet Metal Workers,** 8 Cir. 416 F. 2d 123, and **Cypress vs. Newport News General and Nonsectarian Hospital Assn.,** 4 Cir. 375 F. 2d 648, 654.

The statistics in the Lee Way case show that 25 to 30 anglo line drivers were employed at the San Antonio Terminal when Lee Way acquired a controlling interest. Subsequently, Lee Way hired six anglo drivers and one mexican american who was subsequently discharged. Lee Way never hired a negro line driver in San Antonio. Of 44 city drivers at Lee Way 26 or 28 are mexican american, four are black and the remainder are white or anglo.

In the Yellow Freight case some 50 line drivers were employed at the Dallas Terminal and 46 line drivers were employed at the Amarillo Terminal. Yellow Freight employed no mexican american line drivers until after the filing of the complaint in this case.

Under all of the above it becomes clear that the statistics show a pattern of past hiring discrimination. The "no transfer" policy on management's part has been held to be a violation of Title VII of the Civil Rights Act of 1964. See **Jones vs. Lee Way Motor Freight,** 10 Cir. 1970, 431 F. 2d 245, cert denied 401 U.S. 954 and **Bing vs. Roadway Express Inc.,** 5 Cir. 1971, 444 R. 2d 686.

The gist of Respondents contention is that the "no senority carry over" policy is for all intents and

purposes the same thing as management's "no transfer" policy.

This Honorable Court recently recognized the importance of senority and the question of senority awards as a remedy under the Civil Rights of 1964. In the case of **Franks vs. Bowman Transportation Company,** ..... U.S. ....., 47 L. Ed 2d 444, this court noted the importance of senority at 47 L. Ed 2d 462:

> "Senority systems and the entitlements conferred by credits earned thereunder are of vast and increasing importance in the economic employment system of this Nation."

In the **Franks** case (supra), this Court also specifically considered the question of whether or not an award of senority relief was appropriate under Section 706 (g) of Title VII. This Court after discussing the pertinent authorities including **Albermarle Paper Company vs. Moody,** 422 U.S. 405, 95 S. Ct. 2362; 45 L. Ed 289 (1975) concluded that the "make whole" objective of the statute authorized senority awards as a remedy to victims of racial discrimination. In the **Franks** case, at 47 L. Ed 461, this Court speaking through Mr. Justice Brennan, said:

> "Adequate relief may well be denied in the absence of a senority remedy slotting the victim in that position in the senority system that would have been his, had he been hired at the time of his application. It can hardly be questioned that ordinarily such relief will be necessary to achieve the "make whole" purpose of the Act."

At 47 L. Ed 468, Mr. Justice Brennan writing for the majority went on to say:

> "Without an award of senority dating from the time at which he was discriminatorily refused employment, an individual who applies for and obtains employment as an OTR driver pursuant to the District Court's order will never obtain his rightful place in the hierarchy of senority according to which these various employment benefits are distributed. He will perpetually remain subordinate to persons who, but for the illegal discrimination would have been in respect to entitlement to these benefits his inferiors."

The opinion in **Franks,** (supra) goes on to hold that an award of retroactive senority is not required in every case. The rule announced is that the Court must not follow its inclination but its judgment as guided by sound legal principles.

The Respondents would point out the basis of responsibility of the Petitioner, Southern Conference of Teamsters as ruled by the Fifth Circuit is found in **Rodriguez vs. East Texas Motor Freight,** 5 Cir. 1974, 505 F. 2d 40, 60. Here the Circuit Court points out that the collective bargaining agreement is a contract between the employer and the local union and it is a product of both national and regional collective bargaining units. The supplemental agreements questioned in thiss litigation were negotiated by the Southern Conference of Teamsters and administered at the local level by Local 657.

The two questions presented by the Petitioner,

Southern Conference of Teamsters, which both of which your Respondents say should be answered affirmatively, totally and completely over look the effect of the two senority systems that it has negoiated. These separate rosters turn the key to the lock that imprisons Respondents in lower paying jobs.

Since the rulings in your Respondents cases, several other cases have been decided against the unions on the question of liability of the International Brotherhood of Teamsters, The Southern Conference of Teamsters and the Local Union concerning the maintenance of separate contracts for city and road drivers.

In the recent case of **Sager vs. Yellow Freight System Inc.,** 5 Cir. 1976, 529 F. 2d 72, the Fifth Circuit Court of Appeals held that the International Brotherhood of Teamsters also was responsible along with the Southern Conference of Teamsters and the local union for the maintaining of separate senority lists. The unions argued much the same as they do here. They took the position in the **Sager** case (supra) that the agreements on their face are not discriminatory and they had no notice of discrimination at the terminal involved. The Court went on to hold that the obvious influence exerted by the members of the National Negotiating Committee who were also officers of the International Union was sufficient to hold the International Union responsible for the negotiation of the collective bargaining agreements to find liability.

The Fifth Circuit has consistently taken the position that the union organizations have a duty to

inquire into the effect of the contract provisions when it is reasonable to assume that they might lead to discrimination. The unions have an affirmative obligation to protect their membership against illegal discrimination. This duty includes the responsibility to determine if the agreements that they help negotiate lock in, any such past negotiation. See **Sabala vs. Western Gillette,** 362 F. Supp. at 1153.

The cases which discuss and are authority for the reasoning behind liability for the union organizations under the above reasoning are based on the dual idea of the negotiations conducted by the International and the Southern Conference which are administered by the local union. See **Sabala vs. Western Gillette Inc.,** S.D. Texas 1973, 363 F. Supp 1142, aff'd 5 Cir. 1975, 516 F. 2d 1251; **United States vs. T.I.M.E.D.C.,** 5 Cir. 1975, 517 F. 2d 299; **United States vs. Pilot Freight Carriers, Inc.** M.D.N.C., 1972, 4 FEP cases 472.

The Petitioner, Southern Conference of Teamsters further attempts to distinguish the holdings of the Courts in **United States vs. Jacksonville Terminal Co.,** 5 Cir. 1971, 451 F. 2d 418 cert. denied 406 U.S. 906, **Local 189 United Papermakers and Paperworkers vs. United States,** 5 Cir. 1969, 416 F. 2d 980; and **Quarles vs. Philip Morris Inc.,** E.D.Va 1968, 279 F. Supp 505.

The main thrust of the argument is to the effect that these cases were based on the existence of racially segregated local unions. The fallacy of this position is illustrated by the fact that this argument does not take note of the fact that 42 U.S.C. 1981

requires the unions at all levels to inquire and determine whether or not the agreements they negotiate does not perpetuate past discrimination.

B. LOCAL UNION 657

Local Union 657 contends:

1. Since the National Labor Relations Act bars Local 657 from changing provisions of a bargaining agreement once it is negotiated there should be no responsibility on the Local Unions part for resulting discrimination.

2. There is no discrimination on the part of the Local Union because of discriminatory policies on the part of the employer.

Argument and Authorities

The authorities and arguments of Respondents hereinabove contained are equally applicable to the Petitioner, Southern Conference of Teamsters and the Petitioner, Local Union 657.

Briefly stated, Respondents view their "lock in" as the product of a close knit trinity of unions welded into a nationwide bargaining unit. Local 657 attempts to leave the impression that it has nothing whatsoever to do with the creation and preservation of separate senority rosters. The Local Union argues that it could not, acting alone, have effected any relief for these Respondents.

The obvious answer to the argument prsented is found in **Sager vs. Yellow Freight System Inc.,** (supra). The Sager case illustrates the duty imposed on the unions, the local, the area, and the national,

to ascertain whether or not the agreements that they make perpetuate past discrimination.

In **Rodriguez vs. East Texas Motor Freight,** 5 Cir. 1974, 505 F. 2d 40 at page 60 the Fifth Circuit Court of Appeals stated:

> "In our case the supplemental agreements were negotiated by the Southern Conference of Teamsters. From these negotiations come, so far as we are now concerned, two separate agreements, one covering city drivers. The agreements provide for senority to run from the date of entry into a particular collective bargaining unit. At the terminal level, these separate agreements are administered by union locals."

The key to the local union's participation then, Respondents argue is the local unions role as the administrator of an agreement which perpetuates past discriminatory practices.

No one can seriously say that Local 657 was unaware of the effect of the maintenance of the separate senority rosters. It must be pointed out that even if management's "no transfer" policy was completely out of the picture, a city driver would still have to lose his union senority in the event he would transfer to an over the road job. These Respondents see no way to separate management's "no transfer" policy and the unions separate contracts which disallow senority carry over from one bargaining unit to the other.

Petitioner Local 657 argues that the ruling of the Fifth Circuit requires Local 657 to monitor the

hiring practices of employers in the trucking industry. The local union professes to have no voice in who is hired. This could well be the situation however, the Court's attention is directed to the opinion of the Fifth Circuit in **Resendis vs. Lee Way Motor Freight Inc.,** 5 Cir. 1974, 505 F. 2d 69. Lee Way domiciles both city and road drivers at its San Antonio Terminal. The best illustration that Respondents can give concerning union resposibility is that when Lee Way abandoned its "no transfer" policy the minority city drivers would still lose senority because of the discriminatory effect of two separate senority rosters.

In arguing that the National Labor Relations Act bars Local 657 from singularly effecting changes in the collective bargaining agreement, the local union attempts to leave the impression that it is helpless to correct a problem in the trucking industry that has been the subject of much litigation.

In **Franks vs. Bowman Transportation Company,** the Court at 47 L. Ed 2d 464 discusses the provisions of the remedial section of The National Labor Relations Act. 29 U.S.C. Section 160. Generally, the board is upon complaint empowered to hold hearings to determine unfair labor practices and to remedy same. It is suggested and argued on behalf of these Respondents that both Petitioners, the Southern Conference of Teamsters and Local 657 owed a duty to their membership which they failed to pursue under this section of the National Labor Relations Act but preferred to let the discriminatory maintenance of separate senority rosters continue to flourish.

Both Petitioners argue in essence that the sep-

arate senority is "a bona fide senority system" within the meaning of Section 703 (h) of Title VII.

Respondents' position is that the effect of this senority system is discriminatory. A brief look at the statistical evidence shows clearly that there are very few minority over the road drivers. Respondents further contend that there is no practical way that city drivers, a vast majority of which belong to minority groups, would ever be able to transfer to road jobs as long as they are required by the separate contracts to surrender their senority.

CONCLUSION

Respondents pray that the judgments of the Fifth Circuit Court of Appeals be affirmed as to these six Respondents and that this Court order the Trial Court to hold a hearing concerning appropriate remedies.

Respectfully submtted,

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CERTIFICATE OF SERVICE

In accordance with the rules of this Court, true copies of the foregoing have been served upon the following counsel of record by placing same in the United States Mail postage prepaid on this 10th day of September, 1976.

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